

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

HENRY WILLIAM JOHNSON, II,

Petitioner,

v.

CIVIL ACTION NO. 5:08-cv-01124

DARRELL MCGRAW,

Respondent.

MEMORANDUM OPINION AND ORDER

Before the Court is Petitioner Henry William Johnson II's Application to Proceed Without Prepayment of Fees [Docket 1]; Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody [Docket 2]; Motion for Declaratory Judgment [Docket 3]; and Motion for Summary Judgment [Docket 7]. By Standing Order entered August 1, 2006, and filed in this case on September 25, 2008, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and a recommendation (PF&R). Magistrate Judge VanDervort filed his PF&R [Docket 10] on August 12, 2009, recommending that this Court deny Petitioner's motions and dismiss his § 2254 petition.

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal this Court's

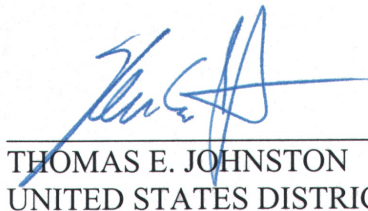
Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir.1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the PF&R in this case were due on August 28, 2009. To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the PF&R [Docket 10], **DENIES** the Application to Proceed Without Prepayment of Fees [Docket 1]; **DISMISSES** the Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody [Docket 2]; **DENIES** the Motion for Declaratory Judgment [Docket 3]; **DENIES** the Motion for Summary Judgment [Docket 7]; and **DISMISSES** this case from the docket. A separate Judgment Order will enter this day implementing the rulings contained herein.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: September 10, 2009



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE